

City of Clinton/Clinton Police Dept. Barg. Unit

2005-2006
CEO 162
SECTOR 3

IN THE MATTER OF FACT-FINDING) IMPASSE RECOMMENDATIONS
)
between)
)
City of Clinton, Iowa)
) Iowa PERB Case CEO #162/3
-and-)
)
Clinton Police Department)
Bargaining Unit) February 28, 2006
))

APPEARANCES

For City of Clinton, Iowa

William J. Sueppel, Attorney, Iowa City, Iowa

For Clinton Police Department Bargaining Unit

G. Wylie Pillers, III, Attorney, Clinton, Iowa

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JURISDICTION OF FACT-FINDER

The City of Clinton, Iowa (hereinafter referred to as the "City" or "Employer") and Clinton Police Department Bargaining Unit (hereinafter referred to as the "Union" or "Unit") failed to conclude bargaining in negotiations for a successor collective bargaining agreement effective July 1, 2006 through June 30, 2007, and all mediation attempts failed. The City and the Union (hereinafter referred to as the "Parties") are now proceeding to fact-finding under the statutory impasse procedure set forth in Chapter 20 of the Iowa Code.

The fact-finder, Richard John Miller, Maple Grove, Minnesota, was selected by the Parties from a panel submitted by

the Iowa Public Employment Relations Board. A hearing in the matter convened on February 21, 2006, at 10:00 a.m. in City Hall, 611 South Third Street, Clinton Iowa. The Parties were afforded full opportunity to present evidence and arguments in support of their respective positions. The Parties elected to make oral arguments in lieu of filing post hearing briefs.

The record was kept open at the request of the Union until the end of the business day on February 27, 2006, in order to receive information from the City's health plan administrator (Tim Kearns) and allow the representatives to respond to that information. Following receipt of written evidence, testimony and arguments from the Parties, the hearing was considered closed on that date.

BACKGROUND

The City is an Iowa political subdivision with a population base of approximately 28,000 and covering approximately 35 square miles of incorporated city limits.

The Unit is comprised of employees of the City's Police Department. The Police Department currently has a maximum authorized sworn manpower strength of 48 officers. The sworn officers in the Unit consist of 26 patrolmen, 7 corporals and 7 sergeants. The Unit also consists of 8 non-sworn officers (ACO),

a secretary, a receptionist, CID Specialists, and a recording clerk.

The Parties have been signatories to several collective bargaining agreements since the inception of collective bargaining in the 1970's. The current collective bargaining agreement expires on June 30, 2006.

ISSUES AT IMPASSE

Negotiations between the Parties have resulted in agreements with respect to receptionist pay, equalizing the pay of animal control officer and the public service officer, and adding the CID position. There are, however, six impasse items at issue before the fact-finder.

The Union proposes to increase the base entry level salary of each classification and longevity step by 3.5%. The Employer proposes an across-the-board wage increase of 3.25% for all employees in the Unit.

The Union proposes a one-quarter percent step increase for all rank and longevity positions. The Employer opposes any step increase.

The Union proposes no change from the current health insurance contract language. The Employer, on the other hand, proposes that the City's reimbursement to the employee for deductible payment be eliminated from the contract. The City

further proposes the implementation of a prescription drug card added to the health plan effective January 1, 2007, with the following co-payments:

- \$ 5.00 - generic
- \$20.00 - preferred brand/formulary brand
- \$30.00 - non-preferred brand/non-formulary brand

The prescription co-payments shall not count towards deductibles and out-of-pocket maximum on the participant's health plan. If a generic or preferred brand is not available, the participant may apply to the City to receive reimbursement for the difference between the co-payment and \$5.00.

The Union proposes to add \$200 to the current longevity for each annual step for non-sworn employees. The Employer opposes any longevity increase for non-sworn employees.

The Union with respect to out-of-rank pay proposes to amend and revise the language of Article 22 of the contract to provide that any Bargaining Unit Member, sworn or non-sworn, who is assigned to perform work in a higher classification, during a pay period, shall receive the pay assigned to that classification. The Employer opposes any out-of-rank pay for Unit employees other than that provided for in the civil service regulations.

The Union proposes to increase the accrued compensation time to a maximum of 200 hours and allow a 100 hour carryover. The City proposes to maintain current contract language which

provides that compensatory time may be accumulated by each officer to a maximum of 100 hours during the calendar year, with a maximum carryover of 50 hours of compensatory time to the next calendar year.

RECOMMENDATIONS

1. An across-the-board wage increase of 3.25% for all employees in the Unit.
2. A one-quarter percent step increase for all rank and longevity positions.
3. The City's reimbursement to the employee for deductible payment be eliminated from the contract. The implementation of a prescription drug card added to the health plan effective January 1, 2007, with the following co-payments:

- \$ 5.00 - generic
- \$20.00 - preferred brand/formulary brand
- \$30.00 - non-preferred brand/non-formulary brand

The prescription co-payments shall not count towards deductibles and out-of-pocket maximum on the participant's health plan. If a generic or preferred brand is not available, the participant may apply to the City to receive reimbursement for the difference between the co-payment and \$5.00.

4. No longevity increase for non-sworn employees.
5. No out-of-rank pay for sworn or non-sworn employees other than that provided for in the civil service regulations.
6. Maintain current language which provides that compensatory time may be accumulated by each officer to a maximum of 100 hours during the calendar year, with a maximum carryover of 50 hours of compensatory time to the next calendar year.

RATIONALE

The Public Employment Relations Act provides no explicit criteria for fact-finder recommendations. It does, however, list factors arbitrators must consider in fashioning their awards at Section 20.22(9) of the Iowa Code. Since the fact-finder's recommendations may be selected later by an arbitrator if the Parties fail to reach final resolution on any of the outstanding impasse issues, it is important that those statutory criteria be given appropriate consideration by the fact-finder. The factors have been considered by the fact-finder as follows:

9. The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

a. Past collective bargaining contracts between the parties, including the bargaining that led up to such contracts.

b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.

c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.

d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

Although wages (general wage increase and step increase) and insurance are separate impasse items under Chapter 20, they are

interrelated in this case with some of the factors under Section 20.22(9).

Interest fact-finding and arbitration often confronts neutrals with resolving demands that represent innovative and/or significant structural changes to an agreement previously negotiated by the parties. Such situations should be approached with extreme caution. Accepting such demands too readily may well result in establishing a new or substantially modified agreement provision that the party seeking change would not have been able to achieve in face-to-face negotiations. Such a result is contrary to the fundamental objective of fact-finding and interest arbitration. Accordingly, the party seeking such change bears a heavy burden of persuasion. The evidence and arguments by the party seeking change should be compelling. In addition, since the proposed significant change surfaces in negotiations, there must be an *equitable quid pro quo* for some other concession, with the evidence in support of the change showing what the parties would have deemed to be an appropriate compromise or trade-off. Absent such strong evidence in support of innovative or significant structural change, demands of this nature should ordinarily be rejected by neutrals and left to the parties to resolve in future rounds of collective bargaining negotiations.

The City has proposed a significant change in the health insurance plan language. With regard to the first factor under Section 20.22(9), past bargaining history establishes that the City has since the first collective bargaining agreement in the mid-70's provided all of the health insurance benefits to City employees, including the Police Department, Fire Department and Street Department. The current health insurance benefits include a \$250~500 deductible (single/family) which has been reimbursed by the City to the employees. In addition, the City has paid and/or reimburses the Police, Fire and Street Department employees for the costs of prescription drugs.

At the initiation of collective bargaining negotiations for the successor contract, the City proposed that the employees pick up and pay the current deductible (\$250/\$500) and all of the prescription drug costs. The City has proposed a prescription drug plan whereby the costs of the drugs to the employees would be \$5.00 for Generic, \$20.00 for Preferred Brand Formulary, and \$30.00 for Non-Preferred Non-Formulary. There are currently 5 single sworn police officers, 40 married police officers, 3 single non-sworn employees, and 5 married non-sworn employees.

Based upon recent information e-mailed to the fact-finder and City Attorney William Sueppel by Union Attorney Wylie Pillers from Tim Kearns, who is the administrator for the City's health

insurance plan, the deductibles that are currently reimbursed by the City equals \$79,306 for all City employees. Since the Unit represents approximately 20% of the City's total workforce, the deductible cost to the City for the Unit alone is \$15,861. Thus, assuming this amount would be the same for next fiscal year, Unit members would be paying this amount for their deductibles under the Employer's health insurance plan proposal. This would be a cost-savings to the City. The City claims that the elimination of the deductible reimbursement is estimated to save the City a maximum of approximately \$9,200. (City Exhibit #2).

In addition, the City will generate cost-savings under their proposed health insurance plan by the Unit's assumption of a portion of the prescription drug costs, which are currently born exclusively by the Employer. The Union calculates that the City may save as much as \$15,355 on drug prescription payments by the institution of the proposed plan from the Unit alone. (Union Exhibit #14). This money will come directly out of each Unit employee's pockets. The City estimates the drug card savings to be \$4,500 for the Unit. (City Exhibit #2).

As is the case in most interest disputes the Parties here are not in agreement with the cost-savings under the Employer's proposed health insurance plan. The City conservatively estimates the cost-savings to be approximately \$13,700 and the

Union liberally at about \$31,216. The Parties cannot be faulted for their cost-saving differences because no one knows for certain whether each employee will utilize all or part of their deductible or how many will utilize the prescription drug plan. It would be fair to assume, however, that the cost-savings to the Employer under their proposed health insurance plan will be somewhere between the Parties' estimates.

During negotiations the cost-savings were discussed by the Unit with a proposal for offset. Initially, the Unit was told by the City that the proposed increase in costs for health insurance to the City commencing July 1, 2006, would be 12% to 14%. Understanding the value of health insurance and the costs to the Employer, the Unit sought to negotiate a compromise, which would include some cost sharing to be assumed by the Unit. After the Christmas holidays, the City advised the Unit that the estimates and predictions for health insurance cost increases had been substantially reduced to approximately 2% over the previous year's costs.

It is clear from negotiations that the Union realized that some cost sharing for the health insurance plan should be assumed by the Unit with some offset. In fact, both internal and external comparability shows that some change from the current health insurance plan is warranted. The City's AFSCME Unit has

already agreed to the Employer's proposed health insurance plan, with wage increase of 3.25%. The organized groups that have not agreed to the Employer's proposed health insurance plan is this Unit and the Fire Department Unit, which is planning to proceed to fact-finding and/or arbitration.

The City proposes an external comparability group for comparison purposes consisting of the cities of Marshalltown, Muscatine, Ottumwa, Cedar Falls, Mason City, and Burlington. The Union offers a comparability group consisting of the cities of DeWitt, Bettendorf, Mason City, Marion, Ames, Fort Dodge, Waterloo, Marshalltown, and Ottumwa. Both of these comparability groups appear to have merit based on population, location, and number of bargaining unit members in comparison with Clinton.

It should be noted, however, that there are only three reported wage settlements for fiscal year 2006, with Muscatine at 3.5%, Ottumwa (3.5%) and Burlington (2%). Thus, external comparability has limited application in this case based on the small sampling of settlements among the comparable cities. Even assuming *arguendo* that three settlements are a valid comparison, the fact-finder's recommended wage increase for this Unit of 3.25% is within the mainstream of the reported settlements. In addition, Clinton is within the mainstream of the other comparable cities with respect to current salaries paid to their

sworn police officers, sergeants and corporals. (City Exhibit #6; Union Exhibit #9).

The evidence establishes that Clinton's current health insurance plan is far superior to any of the reported comparable cities. All of the reported cities require their employees to either pay for single and family premiums, deductibles, co-pays or drug card. The only exception is Clinton. (City Exhibit #7). Clearly, external comparability shows that some change is warranted in the City's current health insurance plan.

The Parties have been unable to agree to the terms of an adequate compensation or reimbursement for assumption of the deductible and out-of-pocket maximum payments. Accordingly, the City, who is seeking such change bears a heavy burden of persuasion. The evidence and arguments offered by the City for such change in the health insurance plan were compelling in light of internal and external comparability. This compelling showing, however, is not enough. Since the proposed significant health insurance change surfaced in negotiations, there must be an *equitable quid pro quo* for some other concession, with the evidence in support of the change showing what the Parties would have deemed to be an appropriate trade-off. The City failed to provide any justifiable *equitable quid pro quo*. Most certainly, a recommended wage increase of 3.25%, standing alone, is not an

adequate trade-off in light of the wage settlement trend among the comparable cities.

The fact-finder, however, has provided this *equitable quid pro quo* by recommending a step increase of .25%, which is estimated by the City to cost \$20,868 (City Exhibit #2) and by the Union at \$24,532 (Union Exhibit #11). This should adequately offset the cost to Unit employees for acceptance of the Employer's proposed health insurance plan. It should also offset the difference between the recommended wage increase of 3.25% and the cost of living from January 1, 2005 to December 31, 2005, which increased by 4.1%. (Union Exhibit #4). This recommendation represents what the Parties should have deemed to be an appropriate trade-off.

The contract provides a longevity payment to the non-sworn employees as follows:

5-9 years	\$375 annually
10-14 years	\$625 annually
15-19 years	\$875 annually
20+ years	\$1,125 annually

While it is true that longevity payment for the non-sworn employees has not been changed in over six years, the Union's proposal to increase the longevity by \$200 per year for each category for non-sworn employees is not warranted by external comparability offered by the City in their proposed comparability

group. There was no evidence offered by the Union under their proposed comparability group. The cities of Marshalltown, Muscatine, Ottumwa and Mason City have no longevity payments for non-sworn employees in their collective bargaining agreements. Cedar Falls provides for longevity for non-sworn employees, but Clinton's longevity is equal to or better than Cedar Falls in most of the categories of years of service, except for beginning 29 years and beyond. Burlington provides for longevity for non-sworn employees, but Clinton's longevity payment structure is superior. Thus, the majority of the cities in the comparability group do not provide for longevity payments in their contracts for non-sworn officers and, if they do, in most years of service categories Clinton's longevity payments are superior to those cities.

The Union proposes with respect to out-of-rank pay to amend and revise the language of Article 22 of the contract to provide that any Bargaining Unit Member, sworn or non-sworn, who is assigned to perform work in a higher classification, during a pay period, shall receive the pay assigned to that classification. While it is true that due to short staffing of sworn officers management has continued to assign and re-assign from one shift to another shift officers to meet work conditions and minimum staffing of five officers per shift, the Union's proposal in this

regard is not warranted by external comparability offered by the City. There was no evidence offered by the Union under their proposed comparability group with regard to this issue. Four of the eight comparable cities (Marshalltown, Ottumwa, Cedar Falls, and Mason City) provide for out-of-rank pay through Civil Service rules. This is consistent with the practice in Clinton. The Clinton Civil Service rules provide for out-of-rank higher pay after 20 consecutive work days. Muscatine provides for out-of-rank higher pay after 20 consecutive working days in the higher classification in their contract, while Burlington provides for this higher pay in their contract after 10 consecutive working days. Clearly, none of the comparable cities have the "richer" language proposed by the Union in this regard.

The Union's request for an increase of 100 hours in the accumulated maximum for compensatory time and the right to carryover from one year to the next 100 hours is not warranted by either internal or external comparability offered by the City. There was no evidence offered by the Union under their proposed comparability group with regard to this issue. The current contract language of a maximum accumulation of 100 hours and maximum carryover of 50 hours is superior to all of the comparable cities, except for Marshalltown. In fact, Ottumwa does not even address compensatory time in their contract.

There is no evidence in the record that other City employees have a compensatory time accumulation or carryover that is the same or similar to that proposed by the Union.

Finally, the Union's proposal would exasperate the manpower problems facing the City with a manpower shortage caused by sickness, retirement, and police officers serving in Iraq. While the City can be blamed for not hiring permanent replacement officers in a more expeditious fashion, the City cannot be faulted for exercising sound judgment by not permanently replacing officers who may return in the near future from illness or serving in Iraq. The Union's proposal would cause more manpower shortages and require more overtime to fill the vacant shifts than currently exists under the collective bargaining agreement.

The third factor under Section 20.22(9) is the interest and welfare of the public and the ability of the public employer to finance economic adjustments. While the City made a financial constraint argument (City Exhibits #15, 16), the City did not make an inability to pay argument in this case.

The final factor under Section 20.22(9) is the power of the public employer to levy taxes and appropriate funds. Again, because the ability to pay is not an issue, the fourth factor does not determinative in this case.

In the final analysis, the evidence establishes that the fact-finder's recommendations are fair, equitable, and affordable to both Parties and should be adopted by them.

A handwritten signature in cursive script, appearing to read "Richard John Miller", is positioned above a horizontal line.

Richard John Miller

Dated February 28, 2006, at Maple Grove, Minnesota.

CERTIFICATE OF SERVICE

I certify that on February 28, 2006, I served the foregoing Fact-Finding decision upon each of the parties' representatives to this matter and to the Iowa PERB by U.S. Regular Mail at their respective addresses as shown below:

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Richard John Miller, Fact-Finder

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